REMARKS

This Amendment is being filed in response to the Final Office Action mailed from the U.S. Patent and Trademark Office on January 9, 2008 in the above-identified application. Claims 3-18 are pending in this application. Claims 3 and 11 are the base claims and have been amended for clarity in the amendments submitted above. No new matter has been introduced.

The Examiner has maintained a rejection of Claims 3-18 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 5,273,905 to Muller et al. (hereinafter referred to as "Muller"). Applicants respectfully disagree with the Office and request that the § 102(e) rejection be reconsidered and withdrawn.

Summary of Teleconference Interview

Applicants would like to thank the Examiner for participating in a teleconference interview with the undersigned on January 17, 2008. The meeting focused on the remarks of the present Office Action. Additionally, the undersigned and Examiner discussed claim language regarding how fluid is dispensed into a selected cavity as well as the relative movement of the slide cavity and liquid dispenser as disclosed in the present invention.

Summary of Embodiments of Applicants' Invention

An example embodiment of Applicants' invention is described below to highlight some aspects of the invention. It should be appreciated that the description below is merely an example of one of many embodiments that fall within the scope of Applicants' claims and is provided for the purpose of highlighting some aspects of Applicants' invention.

Embodiments of the present application relate to an apparatus and method for automated microscope slide staining. The microscope slide stainer comprises a plurality of slide cavities into which microscope slides are inserted. Liquid is dispensed from an orifice of a cartridge pump (Figs. 1 and 5) into a cavity of a slide located at a slide position (e.g., slide positions 512a-512e of Fig. 6) of a slide frame 510 (Figs. 5 and 6) contained in a slide frame housing 522 (Fig. 6). The liquid dispenser is decoupled from each cavity and dispenses liquid from above into each cavity. A rinse or reagent may be removed via an aspirator (e.g., rinse removal vacuum 544 of Fig. 5) that is decoupled from each cavity and includes a vacuum tube that is extendable down

into any one of the cavities in the slide fames 510. As shown in Fig. 5, the dispensing assembly 500 comprises an assembly base 502, a slide rotor 504 rotatable on the assembly base 502, and a reagent rotor 506 also rotatable on the assembly base 502, and a dispensing station 508. Both the slide rotor 504 and the reagent rotor 506 are controlled by a respective servo motor (not shown) that allows the slide rotor 504 and the reagent rotor 506 to rotate independent of one another to align a reagent over a selected cavity of the plurality of slide cavities.

Summary of Embodiments of Muller

By Fig. 1 of Muller, the apparatus embodiment 140 includes such elements as a removable module 113, apparatus housing 248, and toggle switches 250 to control localized functions. A chamber 46 is comprised of a block member 37, a gasket 44, and a slide 41. The slide 41 may be loaded or unloaded (Fig. 4A). The surface of the slide 41 may be placed over the surface of the block member 37 and gasket 44 to create a chamber (Fig. 4B). The chamber 46 may be completely closed by compressing the gasket 44. By Fig. 6, fluid inlet and outlet channels 47, 48 are located in the side 81 of the block member 37. The channels 47, 48 become smaller channels 54, 56 above which are plennum 57, 58 that are beneath the central flat surface 62 of the block member 37, and fluid is allowed to flow into the chamber 46 via a collection of channels 63 and out of the chamber via a collection of channels 64. In Fig. 20, the fluid flows into and out of the chamber via a series of reservoirs (R1 through R11), valves (V1 through V11), and conduits (C1 through C11). A syringe (shown in Fig. 2) may be used to insert additional fluid into the chamber 46 via a channel 91. If fluid is passed into the chamber 46' using a hypodermic type syringe 256, then "pressurized substantially inert fluid, preferably a gas, such as air, nitrogen, or the like" is sent into the chamber 46' via a conduit 232 to change the volume of the chamber 46' to allow the injected fluid to cover the inside surface 26.

Rejections Under 35 U.S.C. § 102(e)

The Examiner maintains a rejection of Claims 3-18 of the present application under 35 U.S.C. § 102(e) as being anticipated under Muller. For a claim to be anticipated, "each and every element as set for in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co., 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim."

Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236 (Fed. Cir. 1989). The claimed invention of the present application is enunciated in independent Claim 3. Applicants contend that Muller does not expressly or inherently describe every element of the claimed invention in the present application.

First, the Office Action states that "[t]he pending claims do not have any structure that 'dispenses' the fluid above the plural cavities." Applicants believe that the present amendments address this. The Office Action also states that "one having ordinary skill in the art would have expected the well known results of fluid addition and this would have been obvious in light of Muller et al." However, in Muller, liquid is allowed to enter the chamber either via inlet and outlet fluid channels or a syringe from the side of the chamber. The channels receive the fluid from a series of reservoirs, valves, and conduits that are permanently placed in the apparatus. The type of fluid entering the block member is changed by adjusting the valve to direct the fluid, be it from a reservoir or cooling water. In contrast, the present application allows fluids to enter a selected cavity of a plurality of cavities by being dispensed from the orifice of a liquid dispenser located above the selected cavity.

Secondly, the Office Action references column 4, lines 27-51 of Muller as teaching "... modules contains [sic] ... having a gasket-equipped slide contacting chamber with input and output fluid passageways...' that move relative to the fluid input/output means." In Muller, once the slide is loaded into the chamber, the chamber and fluid inlet do not move relative to each other. However, in the present application one or both of the slides and reagent dispensers move relative to one another to allow for the selection of a particular cavity and dispensing liquids into the particular cavity. Therefore, the stationary nature of the apparatus of Muller does not teach the microprocessor controlled movement of either the slide cavities or an orifice of a liquid dispenser for relative movement as claimed in the present application.

Based upon the above arguments, Muller does not either explicitly or inherently teach every element of Claim 3 of the present application. As Claim 11 is a corresponding method claim of Claim 3, the above arguments apply to it as well. Claims 4-10 and 18 are dependent upon Claim 3 and Claims 12-17 are dependent upon Claim 11. Hence, the above arguments regarding Claims 3 and 11 are incorporated herein.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By _____

James M. Smith
Registration No. 28,043
Telephone: (978) 341-0036
Facsimile: (978) 341-0136
Concord, MA 01742-9133
Date: 3/12/8